



Book review: Bertrand Wägenbaur (Ed.), Court of Justice of the EU. Commentary on Statute and Rules of Procedure

Bertrand Wägenbaur (Ed.), Court of Justice of the EU. Commentary on Statute and Rules of Procedure. Oxford: Hart Publishing, 2013. 922 pages. ISBN: 9781841139951.
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Aims

The Common Market Law Review is designed to function as a medium for the understanding and implementation of European Union Law within the Member States and elsewhere, and for the dissemination of legal thinking on European Union Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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Bertrand Wägenbaur (Ed.), *Court of Justice of the EU. Commentary on Statute and Rules of Procedure*. Oxford: Hart Publishing, 2013. 922 pages. ISBN: 9781841139951. GBP 165.

This work is based on the author's German-language publication *EuGH Verfo: Satzung und Verfahrensordnungen des EuGH/EuG*. Or rather, the English edition has been "inspired" by the German text as the author puts it in the preface – adding that he has completely rewritten and restructured the text. The structure chosen for the work is what appears to be the obvious one for a commentary like this. Thus, first there is a brief introduction to the Statute of the Court of Justice of the European Union followed by comments for each of the Statute's provisions. Thereafter, the same approach is taken with regard to the Rules of Procedure of the Court of Justice followed by the (pre-2015) Rules of Procedure of the General Court of the European Union. But this is it: the Rules of Procedure of the European Union Civil Service Tribunal have been left out. In the view of the present reviewer, this omission is somewhat unfortunate, and also does not seem to fully correspond to the author's pledge in the preface that "the book seeks to illuminate the procedural rules governing the three judicial instances of the EU by *providing commentary on every article of the Statute of the European Court of Justice as well as the Rules of Procedure of its three constituent instances*" (our emphasis).

As a commentary, the work is first of all a work of reference – a handbook – targeted at practitioners. Examining the work on this premise, it is very good. Wägenbaur provides clear, concise and extensive information on those provisions where this is justified, whilst he does not spend much effort on provisions where there is no need to do so. For example, comments on Article 44 of the Rules of Procedure of the General Court (contents of an application to the General Court) covers 22 pages (pp. 585–607), whereas Article 45 of the same Rules of Procedure (regarding serving the application) merely takes six and a half lines on page 607. At times, however, Wägenbaur becomes too economical with his commentaries – for example, with regard to commentaries on Article 99 of the Rules of Procedure of the Court of Justice

concerning the Court replying to a preliminary reference by reasoned order. One of the situations where the Court may reply by reasoned order is where a question referred “is identical to a question on which the Court has already ruled” In this regard, Wägenbaur explains that the “identical question” requirement “does not mean that the wording of the question must be verbatim the same as that of a question referred in the past, as this would be very rarely the case. It suffices that according to the ECJ the *spirit of the question* referred is the same as that of a question already answered” (p. 338, emphasis in original). This reviewer is convinced that most readers would have appreciated some more guidance as to what “the spirit of the question” really means.

For practitioners, the book bursts with information that may turn out to constitute the difference between success and failure. For example, the author points out (p. 577) that an application may be rejected as inadmissible where “the lawyer fails to sign the application personally and therefore delegates this to a colleague, even though the latter is neither mentioned in the power of attorney, nor entitled to appear before a Court ... of a Member State”. In this respect the author refers to the (almost tragic) Case T-37/98, *FTA v. Council*, where a lawyer introduced an application challenging an anti-dumping duty imposed by the Council. On the last page of the application the name of the lawyer representing the parties had been typewritten. Nevertheless, this lawyer had not signed the application herself, but had let another partner in the law firm do this. This other lawyer had accompanied his signature by the abbreviation “p.p.” (*per procuracionem*). However, since the application had not been signed by the lawyer representing the parties (and since the partner actually signing the application was not entitled to plead before the EU courts in Luxembourg), the application was rendered inadmissible by the (then) Court of First Instance. With Wägenbaur’s fine book in hand, it will be easier to avoid such unfortunate and embarrassing situations.

To my mind there is no doubt that Wägenbaur has produced a very useful book of high quality. I also have some reservations, though. First of all, I found the index to be acceptable – but no more. I would have preferred a much more detailed index that could lead the reader more directly to the place (or places) where a given (sometimes narrow) topic is treated. Moreover, whilst the author has been very careful to provide references to case law whenever relevant, the number of references is generally limited. Hence, in most places only a single case is quoted – sometimes two. But that seems to be it. This may be fine where one (or two) reference(s) fully suffice. But where the case law is not set in stone, so that there is room for interpretation, it may be useful for the reader to be able to consult a larger sample of the applicable case law. I would also have liked the work to include more references to relevant literature or at least a bibliography; the work does include some references, but they seem to be sporadic rather than consistent. Similarly, the book’s factual and concise examination would have benefitted from being complemented by critical academic examinations – and evaluations. Indeed, although in the preface the author writes that the book “combines an academic approach with practical advice”, the present reviewer found the “academic layer” surprisingly thin.

The preceding few, critical remarks do not detract from the fact that Wägenbaur has produced a fine commentary which deserves to find its place on the bookshelves of practitioners pleading before the EU courts in Luxembourg.

Morten Broberg
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